

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5341 OF 2017

Shree Yeshwant Shikshan Prasarak Mandal ... Petitioner
Vs.
Deputy Charity Commissioner and Assistant
Registrar under Societies Registration Act,
Kolhapur Region and another ... Respondents

Mr. Meelan Topkar for Petitioner.
Mr. S. H. Kankal, AGP for Respondents No.1 and 2-State.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 7, 2018

P.C. :

Heard Mr. Topkar, learned Counsel for the petitioner and Mr.Kankal, learned AGP for the respondents No.1 and 2-State at length.

2. This Petition takes exception to the order dated 18.11.2015 passed by the respondent No.1 - Deputy Charity Commissioner, Kolhapur Region, Kolhapur (for short 'D.C.C.'). By that order, D.C.C. rejected the application dated 07.06.2015 submitted by the petitioner to the Assistant Registrar on the ground that there is no compliance of Section 12 of the Societies Registration Act, 1860 (for short 'Act').

3. Rule. Mr. Kankal waives service for the respondents-State. In view of the short controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Topkar invited my attention to Section 12 of the Act. He contended that Section 12 will be applicable only in the event of society registered under the Act decides to alter, extend or abridge any particular purpose or purposes, for which it has been established, within the meaning of the Act or to amalgamate such

society either wholly or partially with any other society or whenever the governing body of any such society registered under the Act decides to change the name of the society. It is only in the event of these contingencies, the governing body has to submit the proposition to the members of the society in a written or printed report, and convene a special meeting for the consideration thereof according to the regulations of the society. He submitted that in the present case, petitioner has proposed to alter the area of operation from Kolhapur District to the State of Maharashtra. The petitioner has not proposed to alter its purpose or to amalgamate with any other society or even change the name of the society. In short, he submitted that in the facts and circumstances of the present case, Section 12 of the Act is not attracted at all. In support of these submissions, he relied upon the decision of the Apex Court in the case of *Managing Committee, K. M. School Vs. Mohinder Kaur*, 1993 Supp (4) SCC 26, and in particular paragraph 11 thereof. He, therefore, submitted that the impugned order deserves to be set aside.

5. On the other hand, Mr. Kankal supported the impugned order. He submitted that admittedly, the area of operation of the petitioner society was Kolhapur District. Now, petitioner has proposed to extend the area of operation from Kolhapur District to the State of Maharashtra. This necessarily means that petitioner is extending the purpose for which it is registered. Respondent No.1 was, therefore, justified in rejecting the application for non-compliance of Section 12 of the Act.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Paragraph 11 of the *Managing Committee, K.M. School* (*supra*) reads thus,

“11. Apart from the requirement contained in Section 12A for registration of the change of name of a Society, with the

Registrar, there is no requirement in the Societies Registration Act which requires registration of any amendment in the memorandum of association or the rules and regulations of a society to be registered with the Registrar. Even in the Companies Act, 1956 a distinction is made in the manner of alteration of the memorandum of association and alteration of the articles of association. Under Section 18 of the Companies Act, it is necessary that the alteration of memorandum of association be registered with the Registrar of Companies within the prescribed period and the alteration makes effect from the date of its registration and under Section 19(1), it is provided that the alteration shall have effect only if it has been duly registered in accordance with the provisions of Section 18. There is no such requirement with regard to registration of the alteration in the articles of association of the company. Here we are concerned with the amendment in the rules and regulations of the Society. In the absence of any requirement in the Societies Registration Act that the alteration in the rules and regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. It is, therefore, not possible to accept the contention of Shri Mehta that the amendment which was made in the rules and regulations by resolution dated July 1, 1979 did not come into effect till March 13, 1980 when the amended rules and regulations were registered with the Registrar, Firms and Societies. The said amendment should be treated to have come into effect from the date on which the resolution making the said amendment was passed, i.e., July 1, 1979. As a result of the said amendment in the rules and regulations of the Society, the alterations made in the rules and regulations in 1963 were reversed and the position as it stood prior to the amendment of 1963 was restored. Consequently, the school which was a minority institution till the amendment of the Rules and Regulations in 1963 and had ceased to be a minority institution as a result of the amendment in 1963 regained its status on a minority institution after July 1, 1979, when the rules and regulations were amended and the original position was restored. In view of the restoration of the minority character of the institution the provisions of the Education Act and the Education Rules ceased to be applicable to the institution after July 1, 1979. The impugned order for termination of the services of the respondent was passed on December 31, 1979, i.e., after the school had become a minority institution. The said order cannot, therefore, be held to be invalid on the ground that it was passed in contravention of Section 8 of the Education Act. The order passed by the

Delhi High Court quashing the said order as well as the Disciplinary proceedings cannot, therefore, be upheld. The respondent was placed under suspension on August 11, 1972 and continued under suspension till April 9, 1973 on which date Education Act came into force. In other words she was under suspension at a time when the Education Act was not in force. The order of suspension cannot be judged on the basis of the provisions of the Education Act and the Education Rules. We are, therefore, unable to uphold the direction of the High Court quashing her order of suspension.”

7. A perusal of the material on record prima facie indicates that petitioner has not proposed either alter its purpose or to amalgamate with any other society or even to change the name of the society. In view thereof, prima facie, Section 12 is not attracted to the facts of the present case. Hence, the following order:

- a. The impugned order dated 18.11.2015 is set aside;
- b. Application dated 07.06.2015 made by the petitioner is restored to the file of the respondent No.1. Respondent No.1 will decide the application uninfluenced by the observations made in this order;
- c. While deciding the application, respondent No.1 will consider whether the amendment proposed by the petitioner is covered by Section 12 of the Act in the light of the decision of the Apex Court in the case of **Managing Committee of K.M. School** (*supra*);

Mr. Topkar assures that representative of the petitioner will appear before the respondent No.1 on 17.12.2018.

- d. On 17.12.2018, respondent No.1 will fix a suitable date and thereafter dispose of the application within 3 months from fixing the suitable date.
- e. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)